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MT LEGISLATIVE HISTORY

Chapter 511 1987

Bill (H) 393 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb11	✓C	Hearing Date(s) Mar20	✓C
Feb18	✓C	Mar21	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb18	✓C	Mar21	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
322	1/20/87	2/19/87 1/27/87	2/2/87			2/23/87 2/17/87					
326	1/20/87	1/27/87	2/2/87			2/2/87					
344	1/21/87	2/9/87				2/21/87					
351		2/16/87	2/23/87	tabled							
353	1/21/87	2/3/87	2/3/87	2/3/87							
354	1/21/87	2/10/87	2/19/87	tabled							
366		2/19/87				2/23/87					
367	1/21/87	2/10/87	2/10/87	2/10/87							
371	1/21/87	2/10/87	2/18/87		2/18/87						
393		2/11/87	2/18/87			2/18/87					
399		2/11/87	2/17/87	tabled							
400		2/11/87	2/17/87			2/17/87					
413		2/2/87	2/6/87	2/6/87							
414		2/19/87	2/21/87	2/21/87							

se a separate sheet for Senate Bills, House Bills, and Resolutions.

HOUSE BILL NO. 393

INTRODUCED BY LORY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

JANUARY 22, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 21, 1987	ENGROSSING REPORT.
FEBRUARY 23, 1987	THIRD READING, PASSED. AYES, 94; NOES, 4.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 1.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

House BILL NO. 393

INTRODUCED BY Tom

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE PROCEDURES FOR REMOVAL OF HUMAN RIGHTS COMMISSION CASES TO DISTRICT COURT; AMENDING SECTIONS 49-2-509 AND 49-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing a complaint in district court. (1) ~~The~~ Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505 ~~and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-2-501~~; and

(b) ~~180 days~~ 12 months have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-2-504 have been unsuccessful.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to cooperate in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(d) the case or an issue in the case is a matter of first impression before the commission; or

(e) the commission staff determines that the allegations of the complaint are supported by substantial evidence and the complainant is not represented by counsel.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a

INTRODUCED BILL
HB-393

complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

~~(2)~~(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued ~~by--the--commission--pursuant--to~~ under subsection (1), the complainant ~~shall~~ may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a the letter, notice, or order issued by the commission staff, the claim shall be barred.

~~(3)~~(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees."

Section 2. Section 49-3-312, MCA, is amended to read:

"49-3-312. Filing a complaint in district court. (1) ~~The~~ Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308 ~~and-has-determined-that-it-will-be--unable-to-hold-a-contested-case-hearing-within-12-months-of-the-date-the-complaint-was-filed-under-49-3-304~~; and

(b) ~~180--days~~ 12 months have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-3-307 are unsuccessful.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to cooperate in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308;

(d) the case or an issue in the case is a matter of first impression before the commission; or

(e) the commission staff determines that the allegations of the complaint are supported by substantial

evidence and the complainant is not represented by counsel.

(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

~~(2)~~(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued ~~by--the--commission--pursuant--to~~ under subsection (1), the complainant ~~shall~~ may petition the district court in the district in which the alleged

violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of ~~a~~ the letter, notice, or order issued by the commission staff, the complaint shall be barred.

~~(3)~~(6) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees."

NEW SECTION. Section 3. Extension of authority. Any existing authority of the commission for human rights to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 4. Effective date -- applicability. (1) This act is effective on passage and approval.

(2) This act applies to cases pending before the commission for human rights on the effective date of this act and to cases filed with the commission for human rights on or after the effective date of this act.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 11, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 11, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

HOUSE BILL NO. 393: Rep. Lory, District No. 59, sponsor, stated this bill comes at the request of the Department of Labor and Industry, specifically, the Human Rights Commission. He submitted written testimony. (Exhibit A). He introduced Anne MacIntyre of the Commission staff to discuss the specifics of the bill.

PROPONENTS: ANNE L. MACINTYRE, Human Rights Division, stated the staff of the Human Rights Commission has a statutory mandate to investigate and conciliate cases filed with it. Therefore, there is a strong emphasis on the mediation and conciliation aspects of the process. In fact, the Commission is able to dismiss or settle a majority of the cases filed without hearing or litigation. In October of 1986, in University of Montana Foundation vs. Human Rights Commission, the Montana Supreme Court determined that the Commission's interpretation of the statute was incorrect and held that the legislature granted the agency a total of 12 months within which to complete the administrative process when a party has requested removal. HB 393 does not reverse the Supreme Court ruling. If this bill is enacted, after a case has been pending for 12 months, either party still has the right to remove the case. The bill also provides that a party could waive the right to request removal. This bill would improve the process for removal to district court and make the Commission's procedures more meaningful. She submitted written testimony. (Exhibit B).

FREDERICK SHERWOOD, Attorney from Helena, served as staff counsel for the Commission from 1978-1982 and expressed his support for HB 393. He explained the bill addresses some weak spots in the present system of transition between the Commission and district courts when such a transition is triggered by the issuance of a "right to sue" letter. He further pointed out that he is less enthusiastic about proposed new subsection (2)(d) of subsection 49-2-509 and 49-3-312, which would allow the Commission staff to refuse

to issue a right to sue letter in matters of "first impression". He submitted written testimony. (Exhibit C).

F. WOODSIDE WRIGHT, Attorney from Helena, supported HB 393 and stated there is a need for clear guidelines for the Human Rights Commission and a set of standards that would allow fairly easy removal of certain types of cases from the HRC to district court. The current statute is confusing. This bill would help move along the cases that the HRC must see.

ANN BROADSKY, Woman's Law Caucus from the University of Montana School of Law, stated this bill strikes a good balance between the interests of moving a case forward into district court. The process stated in HB 393 is less costly and more efficient for society. She urged passage for this legislation.

OPPONENTS: LEORY SCHRAMM, Chief Legal Counsel with the Montana University System, pointed out this bill reverses the 1983 amendment. He stated 12 months is enough time for the Human Rights Commission. The exceptions on page 2 are too vague and should be set out so that if a party fails to comply with a lawful subpoena then that might be a reasonable exception, but the language in the bill does not say that. He requested that a serious look should be taken with HB 393.

There were no further opponents and no questions from the committee.

Rep. Lory closed the hearing on HB 393.

HOUSE BILL NO. 399: Rep. Manuel, District No. 11, sponsor, requires legislative approval of administration rules implementing the provisions of the Montana Human Rights Act that prohibit sex discrimination in education.

PROPONENTS: C. MORTON, Executive Secretary for the Board of Public Education, supported HB 399, but stated they do not want their support of this bill to be misinterpreted. They definitely support equity and they believe the Human Rights Commission fulfills a very real need in the State of Montana. The Board of Public Education is constitutionally responsible for setting policy for the public schools. One of the major forums for school people, in which policy is set and distributed, is the Montana School Accreditation Standards. Public school boards and administrators have come to rely on these standards as their base for determining that they are meeting Montana rules. In conclusion, she stated that the Boards of Education supports HB 399 because it feels that the proposed rules on sex equity in education

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)			
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EXHIBIT 4
DATE 2-11-87
HB 393

HB 393
Introduction - Representative Lory

In 1983 the Legislature amended the Montana Human Rights Act and Governmental Code of Fair Practices to allow cases to be removed from the administrative process to district courts through the use of a procedure known as a "right to sue letter." House Bill 393 corrects problems which have arisen in the interpretation of the statute and clarifies the right to sue procedures in light of a recent Montana Supreme Court decision. It also eliminates some unfair results, especially when a party who has failed to cooperate in the Commission investigation requests removal to avoid the issuance of an adverse ruling and when the Commission has invested substantial effort in preparing the case for hearing and a party requests removal on the eve of hearing.

In addition to correcting these problems, the bill would permit the Commission staff to dismiss cases on its own motion, so that the resources of the Commission are not utilized on frivolous cases.

Anne MacIntyre of the Commission staff is with me today to discuss the specifics of the bill and answer any questions you may have.

DR0002

2-11-87
HB 393

Testimony - Anne L. MacIntyre,

Administrator, Human Rights Division

In Support of HB 393

The staff of the Human Rights Commission has a statutory mandate to investigate and conciliate cases filed with it. Therefore, there is a strong emphasis on the mediation and conciliation aspects of the process. In fact, the Commission is able to dismiss or settle a majority of the cases filed without hearing or litigation.

By way of background, when a case is filed with the Human Rights Commission it is assigned to an investigator for investigation and mediation. If the complaint cannot be resolved informally, a "finding" is issued by the investigator. If there is cause to believe discrimination exists and the case is not settled it proceeds through the conciliation process. If no cause is found, informal appeal may be had. All cases may then proceed through to administrative hearing, before the Commission and, if necessary, a judicial review proceeding.

As Representative Lory has stated the Montana Human Rights Act and Governmental Code of Fair Practices were amended to establish a procedure whereby cases could be removed from the administrative process. One reason for the 1983 amendment was a backlog in cases awaiting administrative hearing. That backlog no longer exists.

The Commission interpreted the statute to reflect its understanding of legislative intent and permitted removal of cases to district court when three conditions existed:

1. 180 days had elapsed since the complaint was filed.

2. The Commission was unable to hold a contested case proceeding within 12 months.

3. The efforts of the division to settle the case after informal investigation had been unsuccessful.

In October of 1986, in University of Montana Foundation v. Human Rights Commission, the Montana Supreme Court determined that the Commission's interpretation of the statute was incorrect and held that the legislature granted the agency a total of 12 months within which to complete the administrative process when a party has requested removal.

House Bill 393 does not reverse the Supreme Court ruling. Rather, the Commission merely seeks to refine the procedures governing removal and establish some statutory exceptions which would permit the Commission to deny a request for removal, even when the time periods contained in the statute have passed.

If this bill is enacted, after a case has been pending for 12 months either party still has the right to remove the case. If a party fails to cooperate, then attempts to remove the case to avoid the issuance of a finding, the Commission could retain jurisdiction over the case. Likewise, if a subpoena enforcement action is necessary to complete the investigation, the Commission could retain the case. The average length of a subpoena enforcement action is about five months, leaving the Commission and its staff insufficient time to complete the investigation and conciliation of the case, much less the contested case hearing.

The bill also expressly provides that a party could waive the right to request removal. In addition, if the staff has certified the case for hearing and 30 days have elapsed, parties could no longer remove the

case. This not only saves the parties preparation time, it also saves valuable resources in the time and effort expended by state employees.

If the case is one of first impression, it could likewise be retained. The parties would benefit from the expertise of the Commission and its staff in its area of specialization.

Finally, if a finding of reasonable cause is issued and the complainant is not represented by counsel, the Commission could process the case administratively. This allows unrepresented parties to take advantage of the administrative procedures without the need to hire counsel.

New subsection (3) of the statute as amended would assist the Commission staff to maintain control of its caseload by issuing right to sue letters in cases when the Commission does not have jurisdiction or where there is no cause to believe discrimination occurred. It also allows the Commission staff to issue a right to sue letter if the complainant fails to keep the Commission staff informed of its whereabouts or otherwise fails to cooperate. These procedures are modeled in part upon EEOC procedures.

This is a means of dealing with cases which lack merit or cases wherein the Commission lacks jurisdiction. It will reduce the costs of processing these claims and reduce the financial burden upon the employers to defend these claims.

The bill provides for decisions to deny requests for removal to district court or to dismiss a complaint to be made by the Commission staff with appeal to the full Commission and opportunity for judicial review.

EXHIBIT C
DATE 2-11-87
HB # 393

LAW OFFICES

REYNOLDS & MOTL

405 NORTH LAST CHANCE GULCH

HELENA, MONTANA 59601

(406) 442-3261

JAMES P. REYNOLDS
JONATHAN R. MOTL
DAVID K. W. WILSON, JR.

FREDERICK F. SHERWOOD,
OF COUNSEL

House Judiciary Committee
50th Legislature
February 11, 1987

Re: HB 393

Mr. Chairman and Members of the Committee:

My name is Frederick Sherwood. I am an attorney who has and does represent clients, both charging parties and respondents, before the Human Rights Commission. I also served as staff counsel for the Commission from 1978 through 1982. I would like to express my support for HB 393.

I believe that the bill addresses some weak spots in the present system of transition between the Commission and district courts when such a transition is triggered by the issuance of a "right to sue" letter. I particularly support the addition of new subsection (2)(a) to §§ 49-2-509 and 49-3-312. This new language would enable the Commission staff to refuse to issue a "right to sue" letter if the requesting party was uncooperative in the investigation.

A client of mine filed complaints with the Commission in January of 1984. The respondent disputed the Commission's jurisdiction and for a long time refused to supply information. Finally, when the commission staff was about to issue its findings, the respondent prevented them by demanding that the right to sue letter then be issued. The courts held that the reason for the delay in the investigation was irrelevant under existing law, and that the Commission had lost jurisdiction solely because of time limitations. The result was that my client's case was tied up for over a year and a half, with no tangible result.

The other part of HB 393 which would be especially useful is proposed new subsection (2)(c) of §§ 49-2-509 and 49-3-312, which would prohibit transferring a case to court later than 30 days after there is notice that a formal Commission hearing will occur. Either party may remove a case to district court in preference to a Commission hearing. Currently, however, such a removal can take place in theory right up to the day of the hearing itself. In practice, I have seen requests for "right to sue" letters as late as a couple weeks before the administrative hearing is scheduled. What happens then is that the parties must

2-11-87
#393

start all over again preparing for a court trial, likely duplicating much work that has already been done at the administrative level. There is no reason why a party should not be required to choose his forum earlier.

I am less enthusiastic about proposed new subsection (2)(d) of §§ 49-2-509 and 49-3-312, which would allow the Commission staff to refuse to issue a right to sue letter in matters of "first impression." I understand the rationale for this proposal, but I think there is too much of a chance of additional argument or litigation over the tangential issue of what is or is not a case of "first impression." With that caveat, I ask that HB 393 do pass.

Respectfully submitted,

Frederick F. Sherwood

Frederick F. Sherwood

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. HB 393 DATE 2/11/87

SPONSOR Lory

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Anne Broadsky	Women's Law Caucus MSU	X	
Frederick F. Blanwood	Helena	X	
Jon Wadsworth/Wright	Helena	X	
Maria Sands	MSLA	X	
Anne MacDonald	Human Rights Commission	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 18, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 18, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 393:

Rep. Gould moved that HB 393 DO PASS. Rep. Gould moved amendments. Question was called and a voice vote was taken. The motion CARRIED 13-1, with Rep. Hannah dissenting. Rep. Mercer stated that the 180 days should be stricken because the Supreme Court says that Human Rights Commission will have 12 months. Rep. Gould moved the insertion of 12 months. Question was called and a voice vote was taken. The motion CARRIED 12-2 with Reps. Giacometto and Hannah dissenting. (See Amendments Attached). Rep. Gould moved that HB 393 DO PASS as amended. Question was called and a voice vote was taken. The motion CARRIED 13-1 with Rep. Hannah dissenting. HB 393 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 448:

Rep. Darko moved that HB 448 be tabled. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 448 TABLED.

ACTION ON HOUSE BILL NO. 470:

Rep. Miles moved that HB 470 DO PASS. Rep. Miles stated that there is a drafting error on page 26 of the bill and moved to amend it by inserting "except traffic records". Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Rapp-Svrcek moved to amend by returning to the original language of the bill on line 10. Question was called and a voice vote was taken. The motion CARRIED 8-7. (See Amendments Attached). Rep. Addy moved to amend the bill by returning to the original language on lines 3-6, page 13. Question was called and a voice vote was taken. The motion CARRIED 12-4. Rep. Miles moved that HB 470 DO PASS AS AMENDED. Question was called and a voice

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

FEBRUARY 18, 19 97

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 392

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

AMENDMENTS AS FOLLOWS

1) Page 1, lines 23 through 25 and page 4, lines 11 through 13.
Strike: "and the" on line 23 of page 1 and line 11 of page 4 through "successful" on line 25 of page 1 and line 13 of page 4

2) Page 2, line 3 and page 4, line 16.
Strike: "cooperate"
Insert: "comply with a lawful subpoena issued"

3. Page 2, line 5 and page 4, line 18.
Following: "court;"
Insert: "or"

4) Page 2, line 8 and page 4, line 21.
Following: "49-2-503" on page 2, line 8 and "49-3-308" on page 4, line 21 → Strike: ";"
Insert: ", unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing."

5) Page 2, lines 9 through 12 and page 4, line 22 through line 1 on page 5.
Strike: subsections (d) and (e) in their entirety

FIRST reading copy (WHITE color)

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0393	3/02	3/20		CONCUR AS AMENDED		3/21
LORY, EARL			REVISE PROCEDURE FOR REMOVING HUMAN RIGHTS CASE TO DISTRICT COURT			
HB0396	2/16	3/09		CONCUR		3/11
PAVLOVICH, BOB			SUSPEND DRIVER'S LICENSE FOR UNLAWFUL OR FRAUDULENT USE OF LICENSE			
HB0400	3/02	3/20		CONCUR AS AMENDED		3/27
MANUEL, REX			REQUIRE LEGISLATIVE APPROVAL OF HRC RULES GOVERNING HOUSING DISCRIMINATION			
HB0413	2/11	3/06		CONCUR		3/6
BRANDEWIE, RAY			REMOVE AMOUNT OF MARIJUANA REQUIRED FOR INTENT TO SELL			
HB0430	2/23	3/17		CONCUR		3/17
BRANDEWIE, RAY			CLARIFY DELIBERATE HOMICIDE SENTENCES			
HB0435	2/12	3/06		ADVERSE REPORT		3/13
BRANDEWIE, RAY			REVISE FORFEITURE IN CRIMINAL PROCEEDINGS			
HB0442	2/19	3/12		CONCUR AS AMENDED		3/24
MERCER, JOHN			LIMIT PUNITIVE DAMAGES			
HB0470	2/23	3/18		CONCUR AS AMENDED		3/21
MILES, JOAN			GENERALLY REVISE PROCEDURE OF YOUTH COURT AND LAW REGARDING YOUTH OFFENDER			
HB0474	3/02	3/25		CONCUR AS AMENDED	NO ACT 3/27	4/16
MOORE, JANET			CORPORATE DIRECTORS, OFFICERS PERSONALLY LIABLE FOR EMPLOYEES' UNPAID WAGES			
HB0478	3/02	3/24			NO ACT 3/27	-
THOMAS, FRED			LIMITED IMMUNITY FOR WEED DISTRICTS			
HB0482	3/02	3/26		CONCUR		3/26
SCHYE, TED			ALLOW JUSTICE COURT TO BE DESIGNATED AS A CITY COURT			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 20, 1987

The forty-seventh meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 20, 1987, by the Chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 393: Representative Earl Lory, House District 59, introduced HB 393, which is by request of the Department of Labor and Industry and revises the procedures for removal of Human Rights Commission cases to district court. (Exhibit 1)

PROPONENTS: Anne MacIntyre, Human Rights Commission testified for the passage of HB 393. (Exhibit 2)

Leroy H. Schramm, Chief Legal Counsel for the Montana University System, supported the bill and presented an amendment and rationale for the amendment. (Exhibit 3) He stated Rep. Lory agrees with the amendment.

Fredrick Sherwood, representing himself, testified in support of the bill with all the amendments. He stated he strongly supports the "sue letter" part of the bill.

Ann Brodsky, Women's Law Caucus, said the Caucus supported the bill but did not care for some of the amendments the House added to the bill. She said on page 2, lines 17-19, which were stricken, is a provision that is part of the Human Rights Commission. She said it makes the process a great deal easier and informal with the provision in. She said on page 2, lines 3-5, the original language was preferable because a party should not benefit from its own wrong doings.

OPPONENTS: There were no opponents.

DISCUSSION ON HOUSE BILL 393: Senator Mazurek inquired how 2(c) on page 2 has a notice of hearing. Ann MacIntyre replied that the hearing examiner schedules a hearing after a notice of hearing is issued. She said the investigation process has to be completed before a notice of hearing can be issued.

Representative Lory closed the hearing on House Bill 393.

CONSIDERATION OF HOUSE BILL 400: Representative Rex Manuel, House District 11, introduced HB 400, which amends the laws relating to rules of the Human Rights Commission as they relate to age discrimination in housing. (Exhibit 4) Rep. Manuel explained the actions by the House Judiciary and said he did not agree with the rule which the House put back in the bill (24.9.1107), so he offered amendments to the bill. (Exhibit 5 and 5A)

PROPONENTS: Representative Dorothy Cody, House District 20, testified in support of the bill. She felt the House amended discrimination into the bill. She would like the bill the way it was presented in the first reading, and if it is not changed back to the original form, she would want to be recorded as an opponent.

Larry Witt, Bozeman Landlord's Association, supported the bill. (Exhibit 6)

Brian McCullough, Helena Landlord's Association, supports the bill. (Exhibit 7)

Jane Wester, realtor, testified in support of the bill because she is a single mother with children. She said several rentals that don't want children, have good reason not to, because of high balconies or many stairs. She said liability plays a big part in certain rentals.

OPPONENTS: Lois M. Durand, a rental manager, opposed HB 400. (Exhibit 8)

Jerry Croteau, representing himself, opposed the bill. (Exhibit 9)

JoAnne Peterson Thun, Bozeman Housing Coalition, opposed the bill. (See witness sheet) She also presented written testimony to the committee for Joyce M. Ridgway of Gallatin Manor in Bozeman (Exhibit 10), and Richard Miller, Bozeman. (Exhibit 11)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 30, 1987
BILL NO. HB 393

SUMMARY OF HB 393 (LORY)

(Prepared by Senate Judiciary Committee staff)

HB393 is by request of the Department of Labor and Industry and revises the procedures for removal of Human Rights Commission cases to district court.

Section 1. Amends 49-2-509 dealing with "Filing a complaint in district court" [as the discrimination statutes apply to private persons]. **Under current law,** a case can be removed from the HRC if if the HRC can not hold a contested case hearing within 12 months or 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation have failed. **This bill** provides that a case can be removed to district court if the HRC hasn't had a contested case hearing and 12 months have elapsed since the complaint was filed. However, under the bill, the HRC staff could refuse to permit removal if: a) the party requesting removal has refused to obey a lawful subpoena issued in the investigative process; b) the party has waived the right to request removal; c) more than 30 days have elapsed since service of notice of hearing, unless the commission fails to schedule a hearing to be held within 90 days of service of notice; d) the party has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint. **The bill** also provides that the HRC staff can dismiss a complaint and allow filing in district court if: a) the commission lacks jurisdiction; b) the complainant fails to cooperate or fails to keep the staff advised of changes of address; or c) allegations in the complaint are not supported by substantial evidence as determined by the commission staff.

Section 2. Amends 49-3-312 dealing with "Filing a complaint in district court" [as the discrimination statutes apply to the government]. **The bill** makes similar changes as described above in the Governmental Code of Fair Practices.

Section 3. Extension of authority.

Section 4. Effective on passage and applies to cases pending before HRC as well as to cases filed in the future.

COMMENTS: None.

C:\LANE\WP\SUMHB393.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 20

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

DATE 7 March 20th

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Gary McCaffree	Rep Dist 59	393	X	
Brian Schweitzer	Helena Landlords	HB400	X	
Sandy Chaney	Women's Lobbyist Fund	HB 400		X
Kathleen Hannaford	American Assoc of Univ Women	HB 400		X
Frederick F Sherwood	self	393	X	
Frederick F Sherwood	self	696		X
Jim Rennie	self	696		X
Jim Reynolds	self	393	X	
Chuck Kommy	MLIC	HB400		X
Sue Bonney	MT University System	HB693		X
"	"	HB 393	X with amendment	
Marian Hanson	Bozeman Housing Coalition	HB 400		X
Margy N. Brown	6000 Wildcat Road	HB696		X
JoAnne Peterson/Ann	BOZ. Housing Coal	HB400		X
Lois McDonald	211 Nordale	HB400		X
Thelma Gibson	1115 S. Wyoming	400		X
Mary Ellen Holden	Bozeman Realtors	HB400		X
Jerry Cartier	Montana's Children	HB400		X
Dennis Nicholson	Butte A-C's	HB 400		X
M. Bly Blick	Bel Oaks Team	HB696	X	
John Sullivan	self	HB 696		X
[illegible]	[illegible]	HB400		X
Anne Montana	MT Cath Conf			X
Jane Weston	Realtors - mother	HB400	X	
Anne Brodsky	Women's Lobbyist Fund/Women's Law Caucus	HB 393	X	
"	"	HB 696		X

(Please leave prepared statement with Secretary)

DATE March 26th

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
[illegible]	[illegible]	696	✓	
Anne MacDougall	Human Rights Comm	373 696	✓	✓

(Please leave prepared statement with Committee)

SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 20 19
BILL NO. HB 393

TESTIMONY OF ANNE L. MacINTYRE, ADMINISTRATOR

HUMAN RIGHTS DIVISION IN SUPPORT

OF HOUSE BILL 393

Representative Lory has introduced House Bill 393 at the request of the Human Rights Commission. The purpose of the bill is to revise procedures for removal of Human Rights Commission cases in light of a recent state supreme court decision interpreting the removal statute.

The Human Rights Act (Title 49, Chapter 2) and the Governmental Code of Fair Practices (Title 49, Chapter 3) require that for all complaints filed with the Commission, the Commission must conduct an investigation and hold a contested case hearing. Removal to district court is permitted if these steps are not completed within certain time frames. The court interpreted the statute to mean the time limit for completion of cases filed with the Commission is 12 months and regardless of the reasons for delay, it a party requests removal of a case to district court after 12 months have elapsed, the Commission loses jurisdiction. We feel that such an interpretation creates a significant inequity in some cases, particularly those cases in which the failure of the respondent to cooperate is the cause of the delay. In addition, the Commission has experienced problems when a party fails to request removal until the eve of the hearing. By this time, the Commission has usually invested significant resources in preparing the case for

hearing, in ruling on prehearing motions and preparing a prehearing order. It is out belief that a party wishing to elect removal to district court should have to exercise that election expeditiously when the case is certified for hearing to avoid unnecessary governmental expense.

House Bill 393 solves these problems by adding a new subsection (2) to both section 49-2-509 and 49-3-312, MCA. Those subsections are identical in each statute and establish fairly limited exceptions for denial of removal to district court even if 12 months have elapsed.

House Bill 393 also adds some provisions to both sections 49-2-509 and 49-3-312, MCA, which permit the Commission staff to dismiss cases on its own motion and permit them to be pursued in the district court. This is set forth as new subsection (3) to both sections 49-2-509 and 49-3-312, MCA. We believe such a provision will give us the ability to better manage our caseload by allowing us to dismiss cases over which we clearly lack jurisdiction, or in which the complainant fails to cooperate, or for which the staff has determined, after investigation, that the allegations of the complaint are not supported by substantial evidence.

The bill also sets up an appeal procedure if a party disagrees with a Commission staff determination to refuse to permit removal or to dismiss a case.

One concern that was raised in the House Judiciary Committee over House Bill 393 was that the bill increased

the amount of time for the Commission to complete the administrative process from 180 days to 12 months. I would emphasize that the bill does not do this. The time limit in the present law is 12 months. House Bill 393 merely eliminates the 180 day limit on investigation and conciliation, but returns the 12 month limit on overall case processing. The Commission merely felt that the 180 day period was somewhat artificial in light of the Supreme Court decision.

With those comments, I request that you recommend that House Bill 393 be concurred.

THE MONTANA UNIVERSITY SYSTEM
33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620-2602
(406) 444-6570

SENATE JUDICIARY
EXHIBIT NO. 3
DATE March 30, 19
BILL NO HB 393

COMMISSIONER OF HIGHER EDUCATION

OFFICE OF LEGAL COUNSEL

TO: Senate Judicary Committee

FROM: LeRoy H. Schramm
Chief Legal Counsel

DATE: March 20, 1987

RE: HB 393

Because I must testify before another Senate committee at the same time HB 393 is heard, I would like to express my support of HB 393 in writing. The University System has numerous cases before the Human Rights Commission at any one time, and we therefore have a great interest in orderly procedures before the commission that end in a decision that is due some legal deference. We support the bill as amended by the House, but we do propose one additional amendment as shown and explained on the attached sheet.

Attachment

Amend HB 393 as follows:

Page 4, between lines 5 and 6, add a new subsection to read as follows:

> "(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, Section 4, of the state constitution or section 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

Page 6, between lines 24 and 25, add a new subsection to read as follows:

> "(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, Section 4, of the state constitution or section 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

Page 1, line 7, after "COURT;" add:

> "CLARIFYING THE EXCLUSIVE NATURE OF REMEDIES AVAILABLE FOR DISCRIMINATION."

Rationale: On February 23, 1987, the Montana Supreme Court decided the case of Drinkwalter v. Shipton. Under the holding of that case, persons alleging acts that violate the discrimination provisions of the Human Rights Act and the Governmental Code of Fair Practices need no longer vindicate their rights under the provisions of these acts. Rather, they are allowed to completely bypass the administrative procedures set up by statute and go directly to court alleging tort theories of recovery grounded on the individual dignities clause of the constitution. This amendment would make clear that the statutory procedures for discrimination are exclusive remedies and cannot be bypassed.

ACTION ON HOUSE BILL 495: Valencia Lane handed out amendments. (Exhibit 8) Senator Brown moved the amendments. The motion carried. Senator Brown moved House Bill 495 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 393: Senator Galt moved amendments presented by Valencia Lane. (Exhibit 9) The motion carried. Senator Brown moved House Bill 393 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 400: Senator Halligan moved BE NOT CONCURRED IN. Senator Mazurek said the proponents thought this problem had liability problems. Senator Halligan WITHDREW his motion after discussing the idea of looking at other states' laws on this subject. Ann MacIntyre, Human Rights Commission, said repealing rule 24.9.1107, would give the Commission guidelines to follow. Senator Blaylock thought the committee should give a statement of intent. Senator Mazurek appointed a subcommittee to the bill. Senators Halligan, Yellowtail and Mazurek would be on the subcommittee. Valencia Lane said she would prepare amendments for it.

ADJOURNMENT: The meeting adjourned at 11:30 a.m.

SENATOR JOE MAZUREK, Chairman

mh

STANDING COMMITTEE REPORT

SENATE JUDICIARY
EXHIBIT NO. 9
DATE March 23 19 87
BILL NO. HB 393

March 23

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 393

Third reading copy (blue color)

Revise procedure for removing human rights case to district court.
Lory (Bishop)

Respectfully report as follows: That HOUSE BILL No. 393

1. Title, line 7.
Following: "COURT;"
Insert: "TO CLARIFY THE EXCLUSIVE NATURE OF REMEDIES AVAILABLE FOR DISCRIMINATION;"

2. Page 4, line 6.
Following: line 5
Insert: "(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

DO PASS

~~DO NOT PASS~~

CONTINUED

Senator Mazurek
Chairman.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 2

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman		X	X
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock		X	X
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

3. Page 6, line 25.
Following: line 24
Insert: "(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."

C:\LAWE\WP\AMDHB393.

AND AS AMENDED
BE CONCURRED IN

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3-21-87
BILL NO H.B. 393

Senator Mazurek